

1 David W. Affeld, State Bar No. 123922  
2 Damion Robinson, State Bar No. 262573  
3 David Markevitch, State Bar No. 256163  
Affeld Grivakes LLP  
4 2049 Century Park East, Ste. 2460  
Los Angeles, CA 90067  
Telephone: (310) 979-8700

Attorneys for Plaintiff Michael Zeleny

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL ZELENY.

**Plaintiff,**

VS.

GAVIN NEWSOM, *et al.*,

### Defendants.

Case No. CV 17-7357 JCS

Assigned to:  
The Honorable Richard G. Seeborg

## Discovery Matters: The Honorable Thomas S. Hixson

## **JOINT STATUS REPORT**

**Status Conference Date:** June 11, 2020  
**Status Conference Time:** 11:00 a.m.

Action Filed: December 28, 2017  
Trial Date: TBD

1     **I. PROCEEDINGS TO DATE**

2       *Proceedings in 2019*

3       Zeleny amended his complaint in early April 2019 to name New Enterprise Associates  
4 ("NEA") as a defendant. The parties stipulated at that time to continue trial and pre-trial dates  
5 allow NEA to enter the case as a party and to resolve any pleading challenges.

6       NEA filed a Motion to Dismiss on May 9, 2019. [Dkt. No. 85]. Because NEA's  
7 involvement in the case impacted the scope of discovery, the parties agreed to defer discovery  
8 until NEA's status was finalized. On July 1, 2019, the Court granted a continuance of trial and  
9 pre-trial dates because NEA's Motion to Dismiss remained pending. [Dkt. No. 95].

10      On July 30, 2019, the Court issued its ruling granting NEA's motion with leave to amend.  
11 [Dkt. No. 98]. Zeleny timely filed a Second Amended Complaint, per the Court's order, on  
12 August 30, 2019. [Dkt. No. 99].

13      NEA again moved to dismiss the Second Amended Complaint on September 25, 2019.  
14 [Dkt. No. 102]. On October 24, 2019, the parties again stipulated to continue discovery and pre-  
15 trial deadlines pending the resolution of NEA's second motion to dismiss. [Dkt. No. 108]. The  
16 Court approved the stipulation on October 25, 2019 [Dkt. No. 109].

17      On November 5, 2019, the Court granted NEA's second motion to dismiss without leave  
18 to amend. [Dkt. No. 111].

19       *Proceedings in 2020*

20      Zeleny filed and on February 28, 2020, the Court granted a motion to compel production  
21 of documents that Defendants Chief Bertini and the City of Menlo Park withheld from  
22 production as privileged. [Dkt. No. 115].

23      Zeleny and the State of California are in an ongoing dispute regarding the scope of  
24 deposition testimony that the State must provide in discovery through a person designated to  
25 testify pursuant to FRCP 30(b)(6) or through Attorney General Becerra. The parties submitted a  
26 joint letter brief on the subject on June 4, 2020. [Dkt. No. 127].

27      Due to the COVID-19 pandemic, the parties were unable to complete select remaining  
28 discovery proceedings and, accordingly, sought two continuances of the trial and pre-trial

1 schedule dates. The Court granted both requests. [Dkt. Nos. 123 and 125]. The current schedule  
2 is as follows:

3 Fact Discovery Cut-Off: July 3, 2020  
4 Expert Disclosures: July 10, 2020  
5 Rebuttal Expert Disclosures: July 31, 2020  
6 Expert Discovery Cut-Off: August 21, 2020  
7 Dispositive Motions Hearings: September 24, 2020  
8 Pre-Trial Conference: TBD  
9 Trial: TBD

10 **II. CURRENT CASE STATUS**

11 The parties have concluded all fact discovery except for:

12 • Further / completion of the deposition of Chief Dave Bertini, who is testifying  
13 individually and as a 30(b)(6) designee for the City of Menlo Park (the “City”) for one day.

14 Counsel for the parties agreed to conduct this deposition on August 7, 2020.

15 • Depositions of a fact witness, Alex McIntyre, who is the current City Manager of  
16 the City of Ventura, California.

17 Counsel for the parties agreed to complete this deposition on July 31, 2020.

18 • Depositions of a fact witness, Ivan Towes.

19 Counsel for the parties will seek to complete this deposition remotely.

20 • Further deposition of a 30(b)(6) witness on behalf of the State of California and/or  
21 a deposition of Attorney General Xavier Becerra, pending the Court’s review and adjudication of  
22 the parties’ joint letter brief on the subject.

23 Zeleny and the City of Menlo Park have reinitiated resolution discussions pursuant to the  
24 Court’s order. [Dkt. No. 126]. No resolution has been reached to date.

25 Dated: June 4, 2020

Respectfully submitted,

26 s/ Damion Robinson

27 David W. Affeld

28 Damion D. D. Robinson

Affeld Grivakes LLP

Attorneys for Plaintiff Michael Zeleny

1                   s/ John Killeen  
2                   John Killeen  
3                   Office of the Attorney General  
4                   Attorneys for Defendant Xavier Becerra

5                   s/ Todd Master  
6                   Todd H. Master  
7                   Howard Rome Martin & Ridley LLP  
8                   Attorneys for Defendants the City of Menlo Park  
9                   and Dave Bertini

10                  # # #

11                  Pursuant to Local Civil Rule 5-1(i)(3), I attest that the foregoing attorneys of record  
12                  authorized the filing of this document and the inclusion of their electronic signatures.

13                  Dated: June 4, 2020

14                  s/ David Markevitch  
15                  David Markevitch

**PROOF OF SERVICE**

I hereby certify that on June 4, 2020, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.

4 || Dated: June 4, 2020

s/ David Markevitch

David Markevitch